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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,170	10/20/2003	Klaus Molzer	A66.2-11057-US01	2718
490	7590	06/30/2004	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			BOSWELL, CHRISTOPHER J	
		ART UNIT		PAPER NUMBER
				3676

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/689,170	MOLZER, KLAUS
	Examiner	Art Unit
	Christopher Boswell	3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 29-49 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 29-49 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/26/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

Claim 29 is objected to because of the following informalities: the word “linter”, in line 7 of the claim is believed to be misspelled. The examiner furthered examination by replacing the aforementioned misspelling with --limiter--. Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 29-33, 35, 37-39, and 48-49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 9-10, 15-16, and 19-20 of U.S. Patent No. 6,662,605 to Molzer (Molzer ‘605).

Although the conflicting claims are not identical, they are not patentably distinct from each other because Molzer ‘605 claims a latch assembly adapted for attachment to a door in a doorframe, the latch assembly comprising a base having a recessed working channel, an aperture, and an arcuate stop fixedly positioned in the working channel, a shaft extending through the aperture, the shaft having a rotational limiter, the rotational limiter being positioned in the

working channel the stop and the rotational limiter being disposed at substantially opposite locations within the working channel; and, a handle fixed to the shaft whereby the handle and shaft are at least partially rotatable with respect to the base between a first position and a second position, the handle being connected to the shaft, the handle having a grasping portion and an arcuate protruding positioning member positioned in the working channel between the stop and the rotational limiter. Wherein, the differences between Molzer '605 claim 1, and the current application are that Molzer '605 is further limited by having "an arcuate stop fixedly position" (column 12, lines 50) and "an arcuate protruding positioning member" (column 12, lines 61-62), where the current application discloses just "a stop positioned" (claim 1, line 3-4), and "a protruding positioning member" (claim 1, line 12), Molzer '605 also claims "said rotational limiter being positioned in said working channel said stop and said rotational limiter being disposed at substantially opposite locations within said working channel" (column 12, lines 55-56) and "an arcuate protruding positioning member positioned in the working channel between the stop and the rotational limiter" (column 12, lines 61-63), where the current application discloses "said rotational limiter being positioned in said working channel said stop being separated from said rotational limiter within said working channel" (claim 29, lines 6-8) and "said protruding positioning member constructed for movement between said stop and said rotational limiter" (claim 1, lines 12-14).

Additionally, Molzer '605 has a narrower scope within the limitation of an arcuate stop and arcuate protruding positioning member, and it is obvious to one with ordinary skill in the art at the time the invention was made where the stop and rotational limiter are separated (current application) when the stop and rotational limiter is disposed at substantially opposite locations

(Molzer '605), and where a partially rotatable handle having a protruding positioning member positioned between the stop and the rotational limited (Molzer '605), is constructed for movement between the stop and the rotational limiter (current application).

Furthermore, claims 30-33, 35, 37-39, and 48-49 of the current application are identical to claims 2-7, 9-17, and 19-20 of Molzer '605, respectfully.

Claims 34, 36, and 41-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 40, 43-45, and 47 of Molzer '605, as applied above, and in view of claims 2, 4, 10 and 11, respectfully, of 6,354,119 to Molzer (Molzer '119).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Boswell whose telephone number is (703) 305-4067. The examiner can normally be reached on 8:30 - 5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3676

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CJB

June 21, 2004

John D. Wohl
Primary Examiner
AU 3676